HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.4357 of 2004

J U D G M E N T

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the Nil award in O.P.No.2546 of 2002 dated 30.08.2004, passed by the IV Additional Chief Judge-cum-Chairman, Motor Vehicle Claims Tribunal, City Civil Court, Hyderabad.

2. The appellant, filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.1,50,000/- from the respondents, towards damage to the vehicle i.e., Tata Sumo bearing No.AP.28.U.8879, that was caused in a road accident.

3. The appellant in the petition claims that he is the owner of the Tata Sumo, and on 22.08.2002 at 11:00 p.m, while the driver of the said Tata Sumo was driving the vehicle from Chout Uppal and coming towards Hyderabad, and when he reached the outskirts of Batasingaram in front of Reshmi Dhaba, a lorry bearing No.KA.03.A.324 coming from opposite direction, driven by its driver in a rash and negligent manner, dashed the Tata Sumo, due to which, it was completely damaged with repairs and the driver and inmates of the vehicle sustained grievous injuries. The police Hayath Nagar, Police Station, registered a case in Cr.No.300 of 2001 for the offence punishable under Section 337 I.P.C. The appellant spent huge amount to a tune of Rs.1,50,000/- towards repairs, and hence prayed the Court to grant compensation for the damages.

4. Before the Tribunal, the first respondent remained *ex parte* on 19.06.2003.

5. The brief averments made in the counter filed by the second

respondent are as follows:

The respondent denied the manner in which the accident taken place and put the appellant to prove that the driver of the offending vehicle was holding a valid driving license and put the appellant to prove that the driver was rash and negligent while driving the offending vehicle, which was insured with the second respondent. The respondent also put the appellant to prove the damages caused to the vehicle and the repairs undertaken by the appellant by spending huge amounts and expressed his ignorance as to whether any criminal proceedings are launched or not, and further contended that the compensation claimed by the appellant is highly excessive and exhorbitant, and therefore, the second respondent is not liable to pay any damages and prayed the Tribunal to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the appellant got examined PWs.1 to 5 and got marked Exs.A1 to A13 on his behalf. On behalf of the contesting respondent, no oral or documentary evidence was adduced.

7. The Tribunal having considered the oral and documentary evidence on record dismissed the claim petition. Aggrieved by the Nil award passed by the Tribunal, the appellant preferred the present appeal.

8. Learned counsel for the appellant contended that the Tribunal without appreciating the evidence, rejected the claim of the appellant and further, the Tribunal failed to accept the evidence of the Insurance Surveyor, who inspected the damaged vehicle on the ground that he was not the Surveyor, appointed by the respondent and the Tribunal failed to appreciate the oral and documentary evidence produced by the appellant and not appreciated the criminal record properly, wrongly judged the evidence and wrongly rejected the claim of the appellant by disbelieving Ex.A7, and finally prayed the Court to allow

the appeal.

9. On the other hand, the learned counsel for the second respondent argued that eight passengers were travelling in the Tata Sumo at the time of accident; that none of them got injuries and they have not filed any cases for compensation; that even if they received any injuries, they should have filed a claim petition seeking compensation, and therefore, the contention of the appellant that Tata Sumo was extensively damaged cannot be believed and further the appellant has not examined the person from where the spare parts were purchased; that in spite of granting sufficient time, the appellant failed to produce the evidence and the second respondent has not appointed PW.3 to conduct the Survey of the estimation of the loss in this case, and he did not appoint anybody to inspect the vehicle, and therefore the report given by PW.3 is not binding on the Insurance Company and Ex.A13 survey report cannot be believed, and it is the certified copy of the panchanama, created in collusion with the police by the appellant; that the First Information Report and charge sheet Exs.A1 & A2 does not show that there are damages to the vehicle, and therefore, the Tribunal rightly dismissed the claim of the appellant and prayed the Court to dismiss the appeal.

10. Having regard to the submissions made by the learned counsel for both parties, the only point, which is to be decided in this appeal is whether the appellant is entitled for compensation as prayed for?

11. As per the evidence on record, on 22.08.2002 at about 11:00 p.m, PW.2 was driving the Tata Sumo bearing No.AP.28.U.8879, belonging to PW.1 from Chout Uppal towards Hyderabad, and when the vehicle reached near Reshmi Dhaba, the offending vehicle i.e., lorry bearing No.KA.03A.324, driven by its driver in a rash and negligent

manner dashed the Tata Sumo. Police Hayath Nagar registered the case in Cr.No.300 of 2002 against the driver of the said lorry. Ex.A1 is the copy of the First information Report and Ex.A2 is the copy of the charge sheet. These documents show that there was an accident on 22.08.2002. PW.1 is not an eye witness. PW.2 is the driver of the Tata Sumo. PW.3 is the Insurance Surveyor and loss assessor, who inspected the vehicle, at the request of the appellant. PW.4 is the mechanic. PW.5 is one of the panchayatdars of the scene of occurrence under Ex.A13.

12. PW.3 in his evidence stated that he inspected the vehicle and it was badly damaged and most parts are required for replacement and he issued Ex.A4 and the cost of the parts would be worth Rs.69,050/- and labour charges would be Rs.35,250/- and if they put together, it comes to Rs.1,04,300/-. He also allocated a sum of Rs.4,000/- towards Salvage, and when it is excluded, the total estimation comes to Rs.1,00,300/-. He has not filed any evidence to show that he is the surveyor and loss assessor of four Insurance companies and second respondent did not appoint him to inspect the vehicle. He has submitted a report to the appellant.

13. As per the evidence of PW.4, he carried the repairs to the Tata sumo. PW.1 brought the vehicle on 23.08.2002, which was in badly crushed and damaged state. He gave a quotation for Rs.1,49,680/-. PW.4 in cross-examination admits that he has not filed any documentary evidence to show that he is the owner of the Reliance Car clinic at Miyapur and also admits that he knows only electric work of the car. The Tribunal after considering the evidence of PW.4, rightly held that he is not a competent person to speak about the repairs carried out to the Tata Sumo, belonging to the appellant. Further if really, he carried out the repair works, nothing prevented him to take these documents, so as to

arrive a correct figure and appellant is able to lead the evidence. The Tribunal also observed that the appellant has not examined the person, from whom he purchased the spare parts. The appellant in his evidence stated that he purchased the spare parts from various shops. In spite of granting time, the appellant also has not produced the evidence to prove the above said fact.

14. Ex.A13 is the panchanama conducted subsequent to Exs.A1 & A2, and the learned counsel for the respondent argued that if really the vehicle was badly crushed, the driver should have received grievous injuries and passengers should have been received injuries. None of the passengers including PW.2 filed any case for compensation and this itself establishes that the vehicle was not damaged. Thus, the Tribunal has rightly observed that the evidence of PWs.3 & 4 would not improve the condition of the appellant for entitling the damages in view of the infirmities mentioned and the appellant failed to prove the damages to the Tata Sumo and also failed to prove that he incurred an amount of Rs.1,50,000/- towards repairs.

15. Therefore, In view of the oral and documentary evidence produced by the appellant, the Tribunal rightly dismissed the claim petition. The findings of the Tribunal are cogent, as per facts and as per the evidence on record. For the aforesaid reasons, I do not find any merit in this appeal, so as to interfere with the award of the Tribunal.

16. The appeal is accordingly, dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

_____

ANIS, J

Date: 28.02.2014

sr